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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,434	07/25/2003	Brian R. Pleiman	29939/38600A	2345

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EXAMINER

THOMPSON, HUGH B

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/627,434	Applicant(s) PLEIMAN ET AL.	
	Examiner Hugh B. Thompson II	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-9 and 11-24 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-9, 11-24 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2-29-04, 11-12-04, 12-10-04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5, 7-9, and 11-18, 20-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 1, 4, 5, 12, 14, 15, 17, 20, 21, the application has recited and argued the essential nature of the structure and arrangement of the base panel, upper panel, openings, and receptacles, to counteract “a tipping moment on the storage device”. The applicant should note, that absent the receipt of a long handled tool, there appears to be no tipping moment that is created upon the storage device. The applicant also offers no other structural element of the device alone that creates such a tipping moment. The applicant should note that it is the patentability of the storage device and not its relationship to unclaimed elements such as “long handled tools” that is to be determined. Note that long handled tools are not homogeneous in weight, length, circumference, or any other structural feature that would cause the necessary tipping moment that the applicant relies upon to impart structural limitations to the storage device.

Further, the applicant has now recited that the upper panel is supported “solely” by the risers.” The applicant should note that the risers extend from the base panel, so in effect, the upper panels are not “solely” supported by the risers, but are in fact supported by the risers, base panel, and the support surface upon which the storage device is located. Thus, the applicant has

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made claims 1 and 17 indefinite with respect to that particular recitation, in an attempt to define over the Hurt reference. In addition, the phrase “constructed and arranged” in each claim is indefinite, as it is unclear as to what defined structure encompasses the phrase.

With respect to claim 24, it is unclear with respect to what “the front end of the base panel extends further forward than the front end of the upper panel.” Note that in claim 19, the applicant has specifically recited that “the upper panel (has) a generally triangular shape with a front end and a back corner *corresponding respectively to the base panel front end and back corner*.” If the front end and back corners of both panels do in fact correspond to each other, then it is unclear as to how the front end of the base panels extends further forward in claim 24.

Though not an ambiguity per se, claims 4 and 20 recite an “offset horizontal” position between “corresponding” upper and base panel openings/receptacles. The applicant should note that this claim fails to structurally define a specific pattern or location of the openings/receptacles, and that the Hurt reference clearly discloses open chambers 52, any one of which are horizontally offset with respect to the other that is not vertically aligned with a respective opening/receptacle in either upper or base panel.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-5, 8, 9, 13, 14, 16-18, and 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Hurt #6,460,709. Hurt, as recited in column 1, lines 45-58, column 2, lines 51-65, column 3, lines 64-67, and column 4, lines 1-9, discloses a corner storage device comprised of stackable triangular base/upper panels 10, support posts (not shown), horizontal protrusions 68 that are designed to receive weighted articles, and tool/article receiving receptacles/openings 52, which are vertically aligned when the panels are so stacked and are horizontally offset with non-aligned openings/receptacles in either upper or base panel.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hurt as applied to claims 1-5, 8, 9, 13, 14, 16-18, and 20-23 above, and further in view of Wang #6,508,369. Hurt fails to disclose a base panel receptacle ending in a blind end surface. Wang, as best seen in Figure 3, disclose a storage device 10 having a blind end surface assembly 14, 16, that is used to support long handle articles 50 and prevent their engagement with the ground or other support surface. Therefore, to one of ordinary skill in the art, it would have been obvious, as a matter of design choice, to provide the base panel of Hurt with a blind end surface as taught by Wang, so as to prevent engagement with the ground or other support surface of any articles so supported therein, while producing no new and unexpected results.

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Claims 11, 12, 15, and 19 are is rejected under 35 U.S.C. 103(a) as being unpatentable over Hurt as applied to claims 1-5, 8, 9, 13, 14, 16-18, and 20-23 above, and further in view of Mander et al #3,643,812. Hurt fails to disclose a base panel receptacle ending in an angled blind end surface. Mander et al, as best seen in Figure 3, and recited in column 1, lines 67-71, teaches the utility of a storage device 10 having a support surface engaging blind end surface receptacle 19, 21 that has angled sides 20 for drainage purposes. Therefore, to one of ordinary skill in the art, it would have been obvious, as a matter of design choice, to provide the base panel of Hurt with an angled blind end surface as taught by Mander et al, so as to provide for drainage purposes.

Allowable Subject Matter

Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim, any intervening claims, and rewritten to overcome the Section 112 ambiguities as noted above. The primary reason for the allowable subject matter of claim 7, is the panels being substantially identical other than at the moment negating portion of the base panel and a corresponding portion of the upper panel.

Response to Arguments


Applicant's arguments with respect to claims 1, 17, and 19 have been considered but are moot in view of the new ground(s) of rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hugh B. Thompson II whose telephone number is (703) 305-0102. The examiner can normally be reached on Monday thru Friday 9 am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (703) 308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Hugh B. Thompson II
Primary Examiner
Art Unit 3634

March 7, 2005